

September 30, 1998

The Administration's Brady Expansion Act Bent on Ignoring Intent

On August 6 the Clinton Administration released its expansion plans for the Brady Handgun Control Act, whose national waiting-period provisions are set to expire on November 29, 1998. Unfortunately, this Administration has completely replaced the original intent of that law with a partisan anti-gun bent.

In response, Senate Republicans, under the leadership of Senator Bob Smith of New Hampshire, passed a strong unambiguous reminder of the Brady Act's original intentions. This proposal — preventing the stockpiling of lists of legal gun owners, and preventing a tax on the legal purchase of guns to administer the instant-check program — is contained in the FY99 Commerce/State/Justice Appropriations bill, which has yet to undergo a House-Senate conference.

The original intent of the Brady Act was to create a national instant-check criminal database. State officials would then be able to quickly access this computer database to verify the legal purchase of all firearms — both for long guns and handguns. Instead of pursuing certain prosecution for those criminals who are found to have illegally attempted to purchase firearms, this Administration has chosen an agenda of delay and denial, regardless of a person's right "to keep and bear arms."

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The High Court's Line in the Sand: No Mandates on States

On June 27, 1997, the Supreme Court found the mandates of the 1993 Brady Act — requiring local law enforcement to conduct background checks on handgun sales — unconstitutionally burdensome to a state's primary task of law enforcement.

Justice Scalia, writing the majority opinion for *Printz v. United States and Mack v. United States*, recognized the politically explosive dilemma facing law enforcement. The unfunded mandates of Brady forced local law enforcement to divert limited resources from solving crimes to performing time consuming background checks. In the majority opinion,

the Court found that "the federal government may neither issue directives requiring the states to address particular problems, nor command the states' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. Such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

The President quickly requested the Attorney General and Treasury Secretary to study how the Brady Act's mandates could be altered to pass Constitutional muster. Unfortunately, the Administration's solution was further partisan entrenchment, a step away from instant-checks, followed up with certain prosecution for criminal offenders.

Administration's New Brady Expansion Proposal

President Clinton's new Brady expansion proposal seeks three ends:

- a permanent 72-hour waiting period for all handgun sales;
- the right to keep background files for 18 months on *all* persons who purchase firearms; and
- the ability to tax all gun purchasers under the guise of offsetting background check costs.

The 72-hour waiting period extension is currently before the Senate Judiciary Committee. It was introduced by Senator Durbin on July 16, 1998 as S. 2324, the Brady Waiting-Period Extension Act. However, the gun-owner background file and gun tax issues are currently being finalized by the Department of Justice in the form of a proposed rule [63 *Federal Register* 30430, and 43893, June 4, 1998, and August, 17, 1998, respectively].

Waiting Periods: Questionable Crime Control, Unquestionable Political Control

Prior to the establishment of a national instant-check system, the original intent of the Brady Act envisioned a waiting period *only* to allow law enforcement adequate time to verify the background check. Once the instant-check was established, waiting-period delays would no longer be required.

When the Brady bill went into effect, 18 states and the District of Columbia were already exempt from the waiting period. These geographically-diverse states for the most part already had far longer waiting periods established or more restrictive laws requiring a permit or license to own or purchase a firearm. Nonetheless, in 1993, these 18 states and the District of Columbia — representing only 52 percent of the nation's population — comprised 63 percent of all the nation's violent crimes and 57 percent of all its murders. Were waiting periods actually decreasing crime?

Perhaps the best available analysis of U.S. crime data suggests — defying conventional wisdom — that waiting periods have a positive correlation with an increase in violent crimes. According to John R. Lott, Jr., professor of criminal deterrence, law and economics at the

University of Chicago, in his book *More Guns, Less Crime* (University of Chicago Press, 1998), violent crime appears to increase 10 percent in the presence of waiting periods, at the state level. In his study, the *only* crime to actually decrease in the presence of a waiting period was auto theft. Every other crime actually increased in the presence of a waiting period [Lott, p. 84-85, table 4.11].

Even one of the key proponents of gun control has admitted that waiting periods are "not a panacea." Sarah Brady, director of Handgun Control, Inc., also publicly stated that waiting periods are "not going to stop crimes of passion or drug-related crime" [*The Washingtonian*, March 1991].

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In face of the facts, this Administration's continuing demands for national waiting periods can only be motivated by a desire for overt political control, not the crime control demanded by American citizens.

Blacklists and Taxes: A So-Called Crime Control Solution

It is difficult to see the Clinton Administration's intentions as anything other than a continuous attempt to distort the Brady Act's original intent to the maximum extent possible.

This Administration claims the need to stockpile for 18 months defined dossiers on all Americans who seek to purchase a firearm. And to add insult to injury, this "gun owners blacklist" is to be financed by a tax on all firearm purchases.

Record keeping with respect to legal firearms is illegal in any fashion. The Firearm Owners Protection Act of 1986 states that the federal government may never "require that [any firearm] records . . . or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established" [18 § 926(a)]. Further, the Brady Act itself requires the "destruction of all records" [U.S. Code 18 § 922(t)(2)(C)] with respect to the Brady instant-check.

This illegal file-keeping, however, requires money. So despite the clear absence of any authorizing language allowing for a gun tax on those who use the national instant-check system, this Administration chose to interpret a non-relevant appropriations rider as allowing just such a tax. Written well before Brady ever existed, this FY 1991 Commerce/State/Justice Appropriations rider empowered the Director of the FBI to "establish and collect fees to process fingerprint identification records and name checks for *non-criminal justice*, non-law enforcement employment and licensing purposes [emphasis added]." The fees are only to be charged for fingerprint i.d.'s and name checks for "non-criminal justice" purposes. While this Administration claims that the tax will only help offset the "non-criminal justice" costs of Brady, the fact remains that all gun owners are being forced to pay for the acts of criminals.

Returning to Original Intent

In response to the Administration's proposal, Senator Smith of New Hampshire proposed an amendment to the FY99 Commerce/State/Justice Appropriations bill (S. 2260) to make original intent even clearer. The amendment would require "immediate destruction of all information" submitted by a gun purchaser and would prohibit any tax or fee in connection with the national instant-check.

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By a veto-proof margin, 69 U.S. Senators voted in favor of the Smith amendment [roll call vote #217, July 21, 1998]. This overwhelming bipartisan vote yet again sent a clear and unambiguous message — government must never keep records of legal gun owners and cannot compel additional fees on the legal purchase of firearms.

The Real Answer — Crime Control

Americans know that communities are safest when protected with effective crime control, not partisan gun control. Therefore, during consideration of the FY99 Commerce/State/Justice Appropriations bill, Senate Republicans introduced, with unanimous support of the chamber, an expansion of just such a champion program.

This program — called the Youth Crime Gun Interdiction Initiative and commonly referred to as Project Exile — is focused on putting gun-wielding criminals behind bars. It establishes that all gun crimes be given the "highest possible prosecution priority" and provides localities the tools to do so. [For further background on Project Exile, see the RPC paper, entitled "Of Criminals and Guns: The Project Exile Solution," 9/30/98].

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